

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAN D. HITTLE)	
Claimant)	
VS.)	
)	
SOUTHWESTERN BELL TELEPHONE COMPANY)	Docket No. 196,744
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

On January 23, 1997, the Application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark dated July 24, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, James B. Zongker of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Curtis M. Irby of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board. Additions to the record as requested by the respondent are at issue in this matter before the Appeals Board.

ISSUES

- (1) Whether the Award was prematurely entered and should be remanded to the Administrative Law Judge for completion of the record including the testimony of Monty Longacre, respondent's expert.
- (2) The nature and extent of claimant's injury and/or disability.
- (3) Whether the Award was inappropriately calculated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Respondent appealed this matter alleging that the Administrative Law Judge prematurely decided this case before respondent's terminal date had run. A review of the record indicates that no terminal dates were ever established by the Administrative Law Judge under K.S.A. 44-523(b). At oral argument the attorneys agreed to consider whether the report of Mr. Longacre could be stipulated into the record and submitted to the Appeals Board for consideration. Subsequent to oral argument the parties advised the Appeals Board by letter of February 3, 1997, that the deposition of Mr. Longacre had by agreement been rescheduled and would take place on February 19, 1997. The evidence provided from Mr. Longacre would be evidence previously unavailable to the Administrative Law Judge and not considered by the Administrative Law Judge in reaching his decision of July 24, 1996. K.S.A. 1996 Supp. 44-555c requires that "review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

As the evidence in question was never presented to the Administrative Law Judge and as the record is void of any terminal dates being scheduled in this matter, the Appeals Board finds that this matter should be remanded to the Administrative Law Judge for the purpose of establishing terminal dates and considering the entire record prior to issuing a final award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated July 24, 1996, should be, and is hereby, remanded to the Administrative Law Judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Curtis M. Irby, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director